New York State Restaurant Association, Inc.

455 New Karner Road
Albany, NY 12205
(518) 452-4222

Rick Sampson
Vice President

New York City Office
505 8th Avenue 7th Floor
New York, NY 10018
(212) 714-1330

Long Island Office
640 Fulton Street
Farmingdale, NY 11735
(516) 752-0707

Kathy Marsh
Bogdan Marsh & Faiet
Legislative Counsel
(518) 434-9000

LEGISLATIVE MEMORANDUM

M E M O R A N D U M I N O P P O S I T I O N

A.7139 GRANNIS

AN ACT to amend the public health law and the education law, in relation to curtailing exposure to tobacco smoke and prohibiting the advertising of tobacco products and to repeal certain provisions of the public health law relating thereto.

The above captioned bill, which deals with smoking in public facilities, including restaurants, poses enormous problems and economic burdens for the foodservice industry of New York State. The New York State Restaurant Association, representing over 6,000 outlets, is opposed to its passage for the following reasons:

Under the present law, restaurants with more than 50 seats must designate up to 70% of their seating capacity for non-smoking and up to 30% for smoking. While the proposed legislation would retain the 70/30 ratio, it would so only under the most restrictive conditions.

A) A separate enclosed area would have to be designated for the 70% of non-smokers. Access to this non-smoking area could not be through any area where smoking is permitted.

B) Restaurants not presently having such an enclosed area would have to build them and would not only be faced with meaningful costs, but would have to meet local building and fire codes, as well as the Americans with Disabilities Act accommodation code. Not only would there be the cost factor, but many, many restaurants do not lend themselves to the establishment of a separate and enclosed area due to their interior design and/or ambiance.

C) In order to allow smoking, not only would a separate and/or enclosed area be needed, but establishments would be required to have a full liquor license, i.e. beer, wine and distilled spirits. Such a regulation would place at a competitive disadvantage those restaurants who do not have, for whatever reason, a full license. This regulation would have the effect of forcing all of a non-licensed restaurant's smoking patrons to dine at competitors with full liquor licenses.

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In a recent sample survey of over 300 members, the present 70/30% ratio reflects what is actually happening in the marketplace. Members tell us that the law is working and they are vigorously opposed to any changes. Our industry, like many in the State, is still suffering from a major decline in business. We have just come through the worst three months in over 30 years. To add this additional regulatory and economic burden, particularly when it is not necessary, is discouraging and disheartening.

One aspect as it pertains to restaurants that is often overlooked when it relates to tobacco smoke is the fact that many restaurants do have efficient and sophisticated ventilation systems. Not only are these systems installed to remove smoke, but they are also designed to reduce odors and to keep a fresh flow of air moving in the establishments. This is done for our customers' total comfort. One of the by-products has been to reduce the amount of secondhand smoke in these establishments.

We continue to believe that the present law is meeting the demands of the marketplace and should not be changed -- it is working. It is for all of the above reasons that we urge you to oppose this legislation,

Respectfully submitted,

Rick J. Sampson
Vice President

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